

him as the station's Operations Manager. However, the Declaration then averred that he had responsibility for maintaining the file cabinet containing the PIF, thereby implying that he also had responsibility for maintaining the PIF. Consistent with that implication, Mr. Helgeson proceeded to claim that he had assisted with an ongoing affirmative effort since Mr. Ramirez's arrival as General Manager to update and maintain the PIF in accordance with the Commission's rules.³¹⁸ The evidence shows, however, that Mr. Helgeson had not been responsible for maintaining the PIF, that he had not in fact done so, and that he had no idea what the Commission's rules required with respect to the PIF. Indeed, the evidence shows that, three days before he signed his January 16, 1998 Declaration, Mr. Helgeson was thanking Mr. Covell for a list concerning *City Visions* and asking him to continue sending such lists quarterly to keep the station's records up-to-date from that time forward, clearly implying that such had not occurred previously.³¹⁹ Similarly, two weeks after his January 16, 1998 Declaration, the evidence shows that Mr. Helgeson was still "cleaning up" the PIF, while in March 1998, he received memos from Mr. Sanchez about what was required to be in the PIF and how to prepare issues/programs lists.³²⁰ In light of the above, Mr. Helgeson had no basis for suggesting in his January 16, 1998 Declaration that the PIF had been maintained in accordance with the rules.

³¹⁸ See Findings, ¶¶ 46-48.

³¹⁹ See, *id.*

³²⁰ See Findings, ¶ 49.

103. SFUSD's deceptions continued into the investigation that lead to this proceeding. In responding to the Commission's 2001 LOI, SFUSD repeatedly failed to exhibit the truthfulness expected of licensees. As the record evidence shows, Ms. Sawaya, only one week into her new job, correctly concluded that the Renewal Application's certification was inaccurate. In her March 8, 2001 memo to Mr. Sanchez, Ms. Sawaya answered "No" to the LOI's questions that the PIF contained all required supplemental ownership reports and issues/programs lists on August 1, 1997. Ms. Sawaya learned and accurately reported to Mr. Sanchez that Mr. Ramirez prepared supplemental ownership reports after the Renewal Application had been filed and had not placed such reports in the PIF until December 1997. Ms. Sawaya even sent Mr. Sanchez copies of the two reports, along with three others that were also overdue. Likewise, Ms. Sawaya learned and accurately reported to Mr. Sanchez that, because of the 1989 Loma Prieta earthquake, the station had not kept up with required paperwork and had thereby not properly placed issues/programs lists in the PIF. Finally, Ms. Sawaya learned and accurately reported to Mr. Sanchez that back listings of issues/programs lists were in the process of being completed.³²¹ Irrespective of whether she gleaned this information directly from Mr. Helgeson or from her own detective work, Ms. Sawaya determined rather quickly that the PIF had not been maintained as required, a fact that she reported to the Sanchez Law Firm.

104. Inexplicably, however, less than one month later, SFUSD reported exactly the opposite to the Commission. Indeed, in its the Final LOI Response, SFUSD represented that the PIF contained, with one possible minor exception, namely, the 1995

³²¹ See Findings, ¶¶ 57-61.

supplemental ownership report, all required documents on August 1, 1997. SFUSD had absolutely no basis for making such a claim.

105. At the outset of the Final LOI Response, SFUSD suggested that any possible problem with the PIF was related to an earthquake, an unlocked file cabinet and/or disgruntled employees and station volunteers. SFUSD then reported the current contents of Station KALW(FM)'s PIF and asserted repeatedly and unequivocally – without any basis whatsoever – that present management believed that all such materials had been there in 1997.³²² Present management, including Ms. Sawaya, did not believe this to be true, nor did they have reason to do so. Likewise, in light of Ms. Sawaya's March 8 memo that proposed responses to the LOI's questions, Mr. Sanchez had no reason to hold such a belief either.

106. In terms of the specific contents of the PIF, SFUSD dissembled by asserting that supplemental reports for 1993 and 1995 were in the PIF as of August 1, 1997. As reflected in the above-referenced March 8 memo, Ms. Sawaya's review of the PIF had revealed otherwise, as did Mr. Ramirez's October 1997 response to GGPR's Petition Memo document. SFUSD also lied by asserting that Station KALW(FM) Program Guides and NPR issues lists were in the PIF as of August 1, 1997. To the contrary, Mr. Helgeson placed both sets of documents in the PIF in March 2001 only after he had confirmed that the PIF was a disorganized mess and that it lacked required documents.³²³ SFUSD compounded its deceit by including NPR materials for the April, May, and June 1997 time period as attachments to the Final LOI Response. Quite obviously, the point

³²² See Findings, ¶¶ 73-75.

³²³ See Findings, ¶ 62, 68, 74.

of including such materials was to convince the Commission that the PIF was, and always had been, in compliance with the rules.

107. SFUSD's deceit was not limited to its representations in the Final LOI Response. In his Declaration that accompanied the Final LOI Response, Mr. Helgeson swore that SFUSD's attorneys had provided him with a copy of the Final LOI Response, that he had reviewed it, and that he had personal knowledge of the facts asserted therein.³²⁴ On its face, such claims were credible since both the letter and Mr. Helgeson's Declaration bore a date of April 5, 2001 and Mr. Helgeson's Declaration averred that he was Station KALW(FM)'s Operations Manager and had been a station employee since 1987. However, as the record evidence establishes, Mr. Helgeson did not review the Final LOI Response. That document was still being edited on April 5 and April 6.³²⁵ Thus, contrary to his accompanying Declaration, Mr. Helgeson did not have personal knowledge of all the facts asserted in the Final LOI Response.³²⁶ Had he actually had some knowledge of the Final LOI Response, one would have expected Mr. Helgeson to delete, at the least, the demonstrably false assertion that the PIF contained NPR issues/programs lists for the entire license term; he did not do so.³²⁷ Moreover, contrary to the suggestion in the Final LOI Response that he had personal knowledge of the PIF's contents on August 1, 1997 (or, at the least, that he had confirmed the PIF's contents with Mr. Ramirez), Mr. Helgeson did not have personal knowledge of the PIF's contents as of

³²⁴ See Findings, ¶ 79.

³²⁵ See *id.*

³²⁶ See *id.*

³²⁷ See Findings, ¶ 78.

August 1, 1997, nor did he ever determine the bases for Mr. Ramirez's certification.³²⁸

Consequently, the Final LOI Response's representation that SFUSD and Station KALW(FM) management had no reason to disbelieve Mr. Ramirez's certification was patently false. To the contrary, they had every reason to disbelieve it. However, such an admission would have presented a major problem as it would have conflicted with the representations by SFUSD in its January 1998 Opposition about the condition of the PIF and the efforts made by Station KALW(FM) managers to keep the PIF up-to-date.

108. Finally, SFUSD repeatedly failed its duty of candor at the hearing. When confronted with his January 1998 Declaration's statements about the PIF and his responsibilities in relation thereto, Mr. Helgeson repeatedly avoided acknowledging that the intent of such claims was to convince the Commission that the PIF had been maintained as the rules required.³²⁹ Indeed, only after the Presiding Judge intervened did Mr. Helgeson concede that, contrary to the claim in his Declaration, Mr. Helgeson did not have a clue what the rules required.³³⁰ Likewise, even though contemporaneous e-mails reflected that Mr. Helgeson, given his institutional knowledge, was supposed to have helped answer the LOI's questions, he repeatedly insisted that his role was only to bring the PIF up-to-date, notwithstanding that he was the only SFUSD employee to verify the assertions in the Final LOI Response.³³¹ Finally, Mr. Helgeson's hearing testimony that, in so verifying the Final LOI Response, he had no intent of stating what the PIF's

³²⁸ See Findings, ¶¶ 66, 68.

³²⁹ See Tr. 804-14.

³³⁰ Tr. 824-25. See also Tr. 831-42 (discussing EB Ex. 10).

³³¹ See, e.g., Tr. 921-22, 942, 1096-97.

contents were in August 1997 but only intended to state what was in the PIF in April 2001 is nothing short of incredible.³³² SFUSD wanted the Final LOI Response to convince the Commission that the PIF was complete as of August 1, 1997, as SFUSD had falsely represented in its Renewal Application.

109. Ms. Sawaya similarly chose a course of deception and lack of candor. Notwithstanding counsel's stated objective of involving her in the process of answering the LOI, Ms. Sawaya has insisted that her role was merely that of facilitator.³³³ Such testimony is not credible, as evidenced by her March 8, 2001 memos to Mr. Sanchez as well as her correspondence regarding the LOI in March and April 2001.³³⁴ Equally implausible is her oft-repeated claim that the issues raised by the LOI were huge, complex, or otherwise beyond her ken.³³⁵ The fact of the matter is that Ms. Sawaya ascertained after one week on the job that SFUSD's Renewal Application certification about the PIF was false and drafted a detailed memo explaining the deficiencies in the PIF.³³⁶ Moreover, as to other matters, Ms. Sawaya was less than forthright. Specifically, in discussing the circumstances surrounding the Final LOI Response's about face from her March 8, 2001 memo, Ms. Sawaya essentially sought to avoid any responsibility

³³² See Tr. 1112.

³³³ See Tr. 1328-29, 1332, 1437-38.

³³⁴ See Findings, ¶¶ 56-64.

³³⁵ See, e.g., Tr. 1332, 1364, 1436.

³³⁶ At that point, of course, the problem for all connected with SFUSD and intimately familiar with the licensee's prior claims was that they were faced with an unpleasant choice: make an embarrassing admission about the certification and face a serious problem relative to SFUSD's January 1998 claims or continue to deceive. As explained in detail above, SFUSD chose the latter course.

whatsoever by claiming, variously, that she did not read the draft LOI response closely, that she relied on the legal expertise of SFUSD's counsel, and that she placed her trust in others.³³⁷ A far more likely explanation is that she would not put her signature on a declaration affirming facts she knew not to be true. Consequently, although Ms. Sawaya obtained plausible deniability regarding the Final LOI Response by not executing a supporting declaration, she also facilitated the ongoing deception that began with Mr. Ramirez's bogus certification regarding the PIF. Her hearing testimony simply perpetuated that deception.

C. FALSE DEPOSITION TESTIMONY

110. The record evidence establishes that Ms. Sawaya also testified in a deceptive manner during her deposition. Ms. Sawaya's failure to disclose the full extent of her knowledge regarding, and her involvement in, SFUSD's Final LOI Response – in particular, her failure to mention her March 8 memo – cannot be attributed to the passage of time or a faulty memory. Rather, her evasive deposition testimony is part and parcel of SFUSD's less than forthright manner of dealing with the Commission.

111. At the outset, Ms. Sawaya's deposition testimony that she may not have even seen the LOI, and that she did not know who on her small staff was responding to it,³³⁸ is implausible. The record evidence – virtually all of which came to the Bureau's attention well after Ms. Sawaya's deposition – establishes that she provided draft responses to the LOI within a week of her arrival at the station, that she corresponded with others regarding the matter many times during March and April of 2001, and that

³³⁷ Tr. 1424-25, 1427-30, 1432-36.

³³⁸ See Findings, ¶ 82.

she knew of Mr. Helgeson's efforts in providing the Sanchez Law Firm with information regarding the status of KALW's PIF.³³⁹ Her communications with BOE attorneys and outside FCC counsel in connection with the preparation of SFUSD's response to the LOI make clear that Ms. Sawaya understood that the Commission was keenly interested in gathering the truth as to the status of the PIF not only in 2001, but also in 1997.³⁴⁰ Thus, contrary to her contentions that she was unable to recall her involvement in responding to the LOI because she was busy with other matters and was overwhelmed by the complexity of the matter, Ms. Sawaya had accurately assessed the state of the PIF within days of her starting as Station KALW(FM)'s General Manager.³⁴¹ Consequently, the only rational explanation for Ms. Sawaya's failure at her deposition to disclose her extensive involvement in providing information responsive to the LOI, and of directing the activities of her staff toward that end, was an intentional and knowing desire to conceal the station's prior misrepresentations regarding the Renewal Application certification about the PIF and to deceive the Commission into believing that the station had maintained its PIF in accordance with Commission rules since that time.

112. Contrary to her deposition testimony that she had been out of the office for three days after first starting her job and had not really reviewed the PIF until mid-March of 2001, the record evidence establishes that Ms. Sawaya had discussed the matter with Mr. Helgeson and had used the LOI as a template for drafting her March 8 memo.³⁴² In

³³⁹ See Findings, ¶¶ 56-64, 67, 70.

³⁴⁰ See Findings, ¶¶ 56-64, 84-85.

³⁴¹ See Findings, ¶¶ 58-62, 83.

³⁴² See Findings, ¶¶ 54, 56, 58-60, 83.

failing to disclose this document, and claiming no memory of any of the actions that enabled her to draft the March 8 memo, Ms. Sawaya apparently intended to “not reveal the past” in an ultimately misguided attempt “to protect the future” of KALW’s license.³⁴³

113. Ms. Sawaya’s excuses for not testifying truthfully at her deposition are simply not credible. The record evidence indisputably establishes that she fully understood the relevant issues in this proceeding prior to her deposition, as reflected in an e-mail she sent Mr. Sanchez on or about July 19, 2005, a mere two months before her deposition. In that e-mail, Ms. Sawaya understood that “the issue at hand is FCC regulations around what must be in a station’s public file, not whether we ‘think’ our programming is public service or not.”³⁴⁴ At the time of her deposition, the issue of whether evidence of meritorious service would be considered at all had not even been ruled upon. Clearly, her contemporaneous assessment of the relevant issues in this case, which logically determine the issues the Bureau would be likely to explore during her deposition, is a much more reliable indicator of her actual state of mind than her after-the-fact, self-serving explanations as to her evasive deposition testimony. Indeed, Ms. Sawaya’s attempts to excuse her dishonest deposition testimony only underscore the reasonable inference that Ms. Sawaya consciously decided to avoid honestly answering questions about her involvement in responding to the LOI by knowingly shading her testimony in order to distance herself from the inescapable conclusion that she, as General Manager, not only had provided draft answers to the LOI but, in failing to bring

³⁴³ See SFUSD Ex. 20.

³⁴⁴ See Findings, ¶ 87.

to the attention of management the false statements in the Final LOI Response, tacitly ratified SFUSD's misleading response.

114. Ms. Sawaya's attempt to excuse her lack of candor during the deposition by attributing her failure to recall the existence of her March 8 memo (a copy of which was, she concedes, located on her computer), to a simple lack of memory is not convincing. Her numerous communications with counsel, both oral and by e-mail, all reflect that the "license challenge" was a grave matter of concern to her as it had a potentially negative impact on her future employment. While it is understandable that Ms. Sawaya would want to make the controversy regarding the PIF go away, it is implausible that she would "forget" a document that raised troubling questions about the veracity of representations previously made by SFUSD to the Commission. Her additional purported justification for not remembering the memo, namely, that she "doesn't typically print out documents," is belied by that fact that she, in fact, printed two March 8 memos, one of which served as a cover memo for the original signed supplemental ownership reports that she sent to Mr. Sanchez.³⁴⁵

115. As General Manager of Station KALW(FM), Ms. Sawaya had ultimate responsibility for ensuring that the PIF complied with FCC regulations. In addition, Ms. Sawaya was responsible for directing the activities of her staff to achieve such ends. Those activities included responding to the LOI in a timely and truthful manner, which SFUSD repeatedly failed to do. Although questioned extensively at her deposition about her role, if any, in responding to the LOI, Ms. Sawaya intentionally and deceitfully made it appear that she had no involvement in responding to the LOI.

³⁴⁵ See Findings, ¶¶ 56-64, 88.

D. RULE VIOLATIONS/FORFEITURE

116. The *HDO* provides that, irrespective of whether the hearing record warrants an order denying the captioned renewal application, it shall be determined whether an Order of Forfeiture in an amount not to exceed \$300,000 shall be issued against SFUSD for willful and/or repeated violations of 47 C.F.R. §§ 73.1015, 73.3527 and/or 73.3613.³⁴⁶ With respect to 47 C.F.R. § 73.1015, the record evidence establishes that SFUSD, through its agent Mr. Helgeson, willfully lacked candor in its 1998 Opposition to the Petition and willfully failed to tell the truth in its Final LOI Response to the Mass Media Bureau's February 2001 LOI. In addition, the record evidence also establishes that SFUSD failed to comply fully with 47 C.F.R. § 73.3527 by failing to place in the Station KALW(FM) PIF at the times required, supplemental station ownership reports and issues/programs lists. Nevertheless, because the Bureau believes that denial of the Renewal Application is warranted and that any additional sanction is unnecessary, the Bureau does not recommend imposition of a forfeiture.³⁴⁷

E. CONCLUSION

117. The Commission expects licensees to be truthful. "The bedrock requirement for absolute truth and candor from a Commission licensee or from a license applicant is, simply stated, this agency's quintessential regulatory demand."³⁴⁸

³⁴⁶ There is no evidence in the record to suggest that SFUSD violated 47 C.F.R. § 73.3613, which pertained to the filing of certain contracts with the Commission.

³⁴⁷ *Compare David R. Price*, Memorandum Opinion and Order, 7 FCC Rcd 6550 (1992) (unlit tower lights for a period of five months, where the towers were near an airport, warranted both revocation of license and a forfeiture).

³⁴⁸ *California Broadcasting Corporation*, Decision, 2 FCC Rcd 4175, 4177 (Rev. Bd. 1987) (*italics in original*).

Commission applicants and licensees are held to a high standard of candor and forthrightness. The Commission must license more than 15,000 radio and television stations, and therefore relies heavily on the completeness and accuracy of the submissions made to it. Thus, "applicants ... have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate." (citation omitted).³⁴⁹

118. In its policy statement on the character qualifications of broadcast licensees and applicants, the Commission emphasized that the trait of "truthfulness" was one of the key elements of character necessary to operate broadcast stations in the public interest.³⁵⁰ If the Commission cannot believe and rely on its licensees' reports, it cannot maintain the integrity of its processes.³⁵¹ Consequently, a licensee's intentional deception of the Commission by the submission of either false information or incomplete and misleading information is viewed as a "serious breach[] of trust."³⁵² Where the submission of false or incomplete and misleading information results from an intent to deceive, the remedy may be total disqualification, even if the facts concealed do not appear to be particularly

³⁴⁹ *WHW Enterprises, Inc. v. FCC*, 753 F.2d 1132, 1139 (D.C. Cir. 1985).

³⁵⁰ *In the Matter of Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1210 (1986) ("Character Qualifications").

³⁵¹ *Tri-State Broadcasting Co., Inc.*, Decision, 5 FCC Rcd 1156, 1173 (Rev. Bd. 1990).

³⁵² *Character Qualifications*, 102 FCC 2d at 1211.

significant.³⁵³ The remedy of disqualification for misrepresentation applies to noncommercial educational licensees as well as those of commercial facilities, and neither a licensee's size nor the quality of its programming will save its license when it has demonstrated its unreliability or its dishonesty.³⁵⁴

119. As demonstrated in great detail above, the record warrants the conclusion that SFUSD, through its agents (Mr. Ramirez, Mr. Helgeson and Ms. Sawaya) made multiple misrepresentations of fact to, and concealed material information from, the Commission in its Renewal Application, Opposition, LOI Response, deposition testimony and hearing testimony.³⁵⁵ There is no question that these derelictions were intentional. Mr. Ramirez knew that his certification was false, and he, Mr. Helgeson and

³⁵³ *Contemporary Media, Inc.*, Decision, 13 FCC Rcd at 14,454-59 (1998); *FCC v. WOKO*, 329 U.S. 223 (1946); *Standard Broadcasting, Inc.*, Decision, 7 FCC Rcd 8571, 8573-74 (Rev. Bd. 1992); *KQED, Inc.*, Decision, 3 FCC 2601 (Rev. Bd. 1988) (subsequent history omitted) (noncommercial educational television license renewal application denied because of licensee misrepresentation as to why the station had to go off the air).

³⁵⁴ *KQED, Inc.*, *supra*; *Black Television Workshop of Los Angeles, Inc.*, Decision, 8 FCC Rcd 4192 (1993) (subsequent history omitted) (noncommercial educational television station construction permit revoked for unauthorized transfer of control accompanied by deceit).

³⁵⁵ The evidence also suggests that the Sanchez Law Firm, as SFUSD's agent, was also repeatedly less than forthright, *inter alia*, in concocting a rationale for Mr. Ramirez's certification, ignoring information provided by Mr. Ramirez that belied arguments appearing in the Opposition and in his January 1998 Declaration, falsely claiming that Mr. Helgeson had certain responsibilities relative to the PIF that he never had, ignoring Ms. Sawaya's March 8, 2001 memo, asserting purported beliefs on the part of SFUSD and Station KALW(FM)'s management that had no basis in fact, and falsely claiming for Mr. Helgeson that he was subscribing to a letter that he never read. Notwithstanding these apparently deceptive actions, SFUSD chose not to present Mr. Sanchez or Ms. Jenkins as witnesses. As with other noted failures to present evidence, it must be inferred that SFUSD, which had the burdens of proceeding and proof with respect to the issues specified in the *HDO*, opted not to present such evidence because it would have been unfavorable to its case. *See supra* note 306.

Ms. Sawaya knew that Mr. Ramirez's certification that the PIF was complete and timely updated was intentionally false or, at the least, erroneous. Nevertheless, each of them chose repeatedly to assert otherwise or to conceal facts that would have demonstrated the falseness of that certification. Consequently, it must be concluded that SFUSD's certification and subsequent false or misleading statements in regard thereto were accompanied by an intent to deceive.³⁵⁶

120. In light of these determinations, it must ultimately be concluded that SFUSD cannot be relied upon to deal with the Commission in a fully truthful, candid and forthright manner. Therefore, SFUSD lacks the requisite qualifications to be or to remain a Commission licensee. As made clear in the *HDO*,³⁵⁷ SFUSD's repeated deceptions

³⁵⁶ *Black Television Workshop of Los Angeles, Inc.*, *supra*, at 4198 n.41 ("Intent is a factual question that can be inferred if other evidence shows that a motive or logical desire to deceive exists").

³⁵⁷ 19 FCC Rcd at 13335, ¶ 20.

establish serious violations that warrant denial of SFUSD's Renewal Application under section 309(k) of the Act.³⁵⁸

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James W. Shook". The signature is fluid and cursive, with the first name "James" and last name "Shook" being clearly legible.

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³⁵⁸ 47 U.S.C. § 309(k). *See also Contemporary Media, Inc., supra*, 13 FCC Rcd at 14,459; *Leflore Broadcasting Co., Inc.*, Decision, 65 FCC 2d 556 (1977); *Star Stations of Indiana, Inc.*, Decision, 51 FCC 2d 95 (1975).

CERTIFICATE OF SERVICE

Dana E. Leavitt, Special Counsel in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 14th day of October, 2005, sent by first class United States mail, electronic mail (e-mail) and/or delivered by hand, copies of the foregoing "Enforcement Bureau's Proposed Findings of Fact and Conclusions of Law" to:

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